IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Writ Petition No. 535 of 2006

Judgment reserved on 14.7.2006

Date of decision : 22.8.2006

Mohar Singh ..... Petitioner.

Versus

State of H.P. and another .....Respondents.

Coram

The Hon'ble Mr. Justice : **V.K. Gupta, Chief Justice.**
The Hon'ble Mr. Justice : Surjit Singh, Judge.

Whether approved for reporting?[1]

For the petitioner : **Mr. R.L. Sood, Sr. Advocate, with Ms. Sanjeevni Sood, Advocate.**

For the respondents : **Mr. M.S. Chandel, Advocate General, with Mr.J.K. Verma, Dy. A.G., for respondent No. 1.**
Mr. Rahul Chopra, Advocate, for respondent No. 2.

Surjit Singh, Judge

Through the present writ petition, under Articles 226 & 227 of the Constitution of India, the petitioner has sought the quashing of

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Whether the reporters of the local papers may be allowed to see the judgment?

notice dated 5.8.1998, issued by the Collector, Kullu in Case No. 4 of 2002 (Annexure P-3), order dated 29.9.2004 (Annexure P-8), passed by the Collector, Kullu in the aforesaid case No. 4 of 2002 and order dated 9.6.2006 (Annexure P-10), passed by the Commissioner, Mandi Division, Mandi in appeal against the order Annexure P-8, besides seeking direction to the respondents not to take any further action against the petitioner under the provisions of the H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (hereinafter referred to as the Act), and not to evict him from the land measuring one Biswa, 8 Biswansis, bearing Khasra No. 4434/1, situate in Phati and Kothi Naggar, Tehsil and District Kullu, except by due process of law.

2. A notice was issued under the Act to the petitioner on 5.8.1998 (copy Annexure P-3), calling upon him to show cause why he should not be evicted from the land, described hereinabove, as he was in unauthorized occupation thereof within the meaning of the Act. This notice was issued by the Collector, District Kullu on the basis of an application, filed before him by respondent No. 2. In the application respondent No. 2 alleged that the petitioner had made encroachment upon the above described land, which belonged to it, but was managed, supervised and possessed by the State Government. The petitioner, it appears, took the stand that his grand-father had occupied the land, in question, some-time in the year 1965 and constructed a structure thereon and had been running a small shop in that structure till his death, which took place in the year 1989 and that thereafter he (the petitioner) himself had

been in occupation of the land and the structure standing thereon. He alleged that his and his grand-father's possession had been open, hostile, uninterrupted and continuous and thus he had acquired title by prescription. He also pleaded that the premises were not public premises within the meaning of the Act and hence the Collector did not have the jurisdiction.

3. The Collector, vide order Annexure P-8, without indicating how the premises were assumed to be 'public premises', passed the impugned order. The petitioner filed an appeal to the Divisional Commissioner, under Section 9 of the Act. That has been dismissed vide order Annexure P-10. The Commissioner has observed that respondent No. 2, who initiated the proceedings for eviction of the petitioner by making an application to the Collector, is an Improvement Trust and that the property, owned by an Improvement Trust, is covered by the definition of 'public premises' vide sub-clause (i) of clause (e) of Section 2 of the Act and hence the Collector had the jurisdiction.

4. Grievance of the petitioner is that respondent No. 2 is not an Improvement Trust and hence the impugned orders of the Collector and the Divisional Commissioner are without jurisdiction and liable to be quashed.

5. We have heard the learned counsel for the petitioner as also the learned Advocate General for respondent No. 1 and the learned counsel representing respondent No. 2.

6. 'Public premises' are defined in clause (e) of Section 2 of the Act. The aforesaid clause is reproduced for ready reference:-

"2. **Definitions.-** In this Act, unless the context otherwise requires,-

(a) to (d) xxxx xxxx

(e) "public premises" means any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the State Government and includes any premises belonging to, or taken on lease by, or on behalf of-

(i) any municipal corporation / committee, notified area committee, panchayat samiti, Panchayat or improvement trust;

(ii) any company as defined in section 3 of the Companies Act, 1956, in which not less than fifty one per cent of the paid up share capital is held by the State Government,

(iii) any corporation (not being a company as defined in section 3 of the Companies Act, 1956 or a local authority) established by or under a Central Act as defined in clause (7) of section 3 of the General Clauses Act, 1897, or a Himachal Pradesh Act and owned or controlled by the State Government, and

(iv) any cooperative society registered or deemed to have been registered under the H.P. Cooperative Societies Act, 1968."

7. According to the Divisional Commissioner, respondent No. 2 is an Improvement Trust within the meaning of sub-clause (i) and hence the premises are public premises. The view taken by the Divisional Commissioner is fallacious on the face of it. Admittedly the property initially belonged to a private person, who created a

Trust in respect of this property, vide deed Annexure P-1, for the purposes and objects specified in para 5 thereof. Referring to those objects and purposes, the Commissioner has observed as follows:-

> "A close perusal of the objects of the Trust clearly indicates that the Trust has been created for a public purpose. It seeks to achieve the objects as mentioned in the preceding paragraphs. The objectives are welfare oriented and are aimed at creating interest in the fine arts and science. Moreover, the objectives further indicate that the activities of the IRMT are not only confined to India but to the entire World. By no stretch of imagination, one can maintain that if IRMT were not an Improvement Trust and its activities are not meant to achieve a public purpose, the nominees of State Govt. of H.P. and that of Govt. of India would associate with it."

8. The Commissioner has referred to the dictionary meaning of the word "Improvement" to arrive at the aforesaid conclusion. The Commissioner rejected the argument, advanced on behalf of the petitioner, that the term "Improvement Trust", used in sub-clause (i) of clause (e) of Section 2 of the Act, was in the context of Local-self Government Bodies like Municipal Corporation, Municipal Committee, Notified Area Committee, Panchayat Samiti or Panchayat.

9. It is clear from a bare reading of sub-clause (i) of clause (e) of Section 2 of the Act that term "Improvement Trust" has been included in the category of Local-self Government Bodies and,

therefore, it has to be understood and assigned the meaning as a "Local-self Government Body", by following the principle of ejusdem generis. It is a matter of common knowledge that in many towns there are Improvement Trusts for the development of those towns and in fact there is an enactment called 'the Punjab Town Improvement Act, 1922', which provides for creation and incorporation of Improvement Trusts for different towns, with the name of the concerned town prefixed to the term "Improvement Trust" . The Act is applicable in those areas of the State, which were merged with Himachal Pradesh on the reorganization of the erstwhile State of Punjab in the year 1966. Presumably 'Improvement Trust' has been included in sub-clause (i) of clause (e) of Section 2 because of the applicability of the aforesaid Punjab Act to the merged areas.

10. The plea taken by respondent No. 2 in the application, which it submitted to the Collector, Kullu, that the property of the Trust was supervised, managed and possessed by the State Government and so it was covered by the definition of 'public premises', is also not correct. For falling within the definition of "public premises" on account of its linkage to the Government, the property has to belong to, or it has to be taken on lease or requisitioned by or on behalf of the Government. In the present case, admittedly, the property does not belong to the Government nor has it been taken on lease or requisitioned by the Government.

11. From the above discussion it is clear that the property, in question, is not covered by the definition of 'public premises' as given in clause (e)

of Section 2 of the Act and if that is so, the Collector did not have the jurisdiction to take out the proceedings for the eviction of the writ petitioner and to pass the order of eviction in the matter under the Act. Consequently the writ petition is allowed and the impugned orders of the Collector, Kullu and the Divisional Commissioner, Mandi, Annexures P-8 and P-10 respectively, are quashed. Respondents No. 1 and 2 are saddled with costs of Rs.10,000/- each.

(Surjit Singh),
Judge.

Per V.K. Gupta, Chief Justice
(Concurring) :

I have gone through a very elaborate and well reasoned judgment, very painstakingly authored by my learned brother Surjit Singh, J. and even while I fully agree with his views on the subject, looking to the importance of the point involved for consideration in this case, I thought I might put in some words of my own.

The expression "public premises" as occurring in clause (e) of Section 2 of the H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (H.P. Act, for short) is practically in pari materia to its counter-part as occurring in the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (Central Act, for short). The definition of the expression "public premises", as occurring in H.P. Act has been extracted in the judgment of my learned brother Surjit Singh, J. I extract hereinbelow the definition of "public premises" as occurring in the Central Act, which reads thus:-

" 'Public Premises' means-

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 under the control of Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of, -

(i) any company as defined in Section 3 of the Companies Act, 1956 (1 of 1956) in which not less than fifty one per cent of the paid-up share capital is held by the Central government or any company which is a subsidiary (within the meaning of the Act) of the first mentioned company,

(ii) any corporation (not being a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), or a local authority established by or under a Central Act and owned or controlled by the Central Government,

(iii) any University established or incorporated by any Central Act,

(iv) any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961),

(v) any Board of Trustees constituted under the Major Port Trusts Act, 1963 (38 of 1963),

(vi) the Bhakra Management Board constituted under Section 79 of the Punjab Re-organisation Act, 1966 (31 of 1966) and that Board as and when renamed as the Bhakra-Beas Management Board under sub-section (6) of Section 80 of that Act; and

……..”

A look at the aforesaid definition as occurring in the Central Act and its comparison with the definition in the H.P. Act clearly reveal that

the legislature in both the Acts unmistakenly intended that the "public premises" about which the aforesaid legislation were enacted should be in the nature of premises belonging to the Government and/ or such official and legal Institutions as have the trappings of the State or these premises belong to the Institutions or the Organizations which are created by the State or are the instrumentalities of the State. The Central Act as well as the H.P. Act have thus been enacted to provide for a speedy machinery for the eviction of unauthorized occupants of public premises. This intent (to provide a speedy machinery) serves a public purpose in as much as, by and after evicting the unauthorized occupants from the public premises the premises are made available for use by the public. The fact that after evicting unauthorized occupants the premises, thus being vacated, are made available for use by the public was noticed in a five Judges Bench judgment of the Supreme Court in the case of ***Ashoka Marketing Ltd. and another vs. Punjab National Bank and others*** reported in ***AIR 1991 SC 855***. In para 28 of this judgment, their Lordships observed as under:-

> "…….As indicated in the Statement of Objects and Reasons the Public Premises Act has been enacted to provide for a speedy machinery for the eviction of unauthorized occupants of public premises. It serves a public purpose, viz. making available, for use, public premises after eviction of persons in unauthorized occupation. The need to provide speedy machinery for eviction of persons in unauthorized occupation cannot be confined to premises used for residential purposes. ….."

In the same judgment, in para 48 their Lordships observed as under:-

" The Public Premises Act deals with Government property as well as property belonging to other legal entities mentioned in Cls.(2) and (3) of S.2(e) of the Public Premises Act. In so far as it relates to eviction of unauthorized occupants from premises belonging to or taken on lease or requisitioned by or on behalf of the Central Government the Public Premises Act would fall within entry 32 of List 1 being law with respect to a property of the Union. The property belonging to the various legal entities mentioned in Cls. (2) and (3) of S.2(e) of the Public Premises Act cannot be regarded as property of the Union and the Public Premises Act cannot be held to have been enacted under entry 32 of List 1 in respect of the said properties. In *Accountant and Secretarial Services Pvt. Ltd. v. Union of India (AIR 1988 SC 1708)* (supra) this Court has held that the Public Premises Act, in relation to properties other than the properties belonging to the Central Government has been enacted under the concurrent list. The learned Additional Solicitor General has placed reliance on the decision of this Court in Smt. Saiyada Mossarrat v. Hindustan Steel Ltd., (1989) 1 SCC 272 : (AIR 1989 SC 406) wherein it has been held that with regard to the subject matter of speedy eviction of unauthorized occupants from properties belonging to a Government company, wherein the Central Government has more than fifty one per cent of the paid-up capital, the source of authority can be traced to entry 97 read with entry 95 of Union List (List 1). This Court has, however, affirmed the decision of the Division Bench of Madhya Pradesh High Court in L.S. Nair v. Hindustan Steel Ltd. AIR 1980 Madh Pra 106 wherein it has been held that insofar as the Public Premises Act deals with a lessee or licencee of premises belonging to a Government company, the subject matter of the Act would be covered by entries 6, 7 and 46 of List III. After quoting the

observations of the Madhya Pradesh High Court in this regard, this Court has observed:

> ‘ Learned counsel for the petitioner has not been able to show that there is any infirmity in the reasoning of the High Court.’

This shows that the decision of this Court is founded on the view mentioned above. Since the Act was held to be covered by entries 6, 7 and 46 of List III, it was not necessary to invoke the residuary power of legislation under entry 97 of List I. The observations made by this Court that the source of authority in the matter of speedy eviction of unauthorized occupants from properties belonging to a Government company wherein the Central Government has more than fifty one per cent of the paid-up share capital can, in any case, be traced to entry 97 read with entry 95 of List I are obiter in nature only. There is, therefore, no inconsistency between the decisions of this Court in Accountant and Secretarial Services Pvt. Ltd. (AIR 1988 SC 1708)(supra) and Smt. Saiyada Mossarrat case (AIR 1989 SC 406) (supra) in as much as in both the decisions it is held that the Public Premises Act in so far as it deals with a lessee or licencee of premises other than premises belonging to the Central Government has been enacted in exercise of the legislative powers in respect of matters, enumerated in the Concurrent List. We are in agreement with this view.”

Elsewhere in the same judgment, dealing with the issue relating to the object sought to be achieved by the enactment of the Central Act viz. to safeguard the public interest by making available for public use premises belonging to the Government etc. their Lordships observed as under:-

> "This shows that the Public Premises Act has been enacted to deal with mischief of rampant unauthorised occupation of public premises by providing a speedy machinery for the eviction of persons in unauthorised occupation. In order to secure this object the said Act prescribed the time period for the various steps which are required to be taken for securing eviction of the persons in unauthorised occupation. The object underlying the enactment is to safeguard public interest by making available for public use premises belonging to Central Government, Companies in which the Central Government has substantial interest, Corporations owned or controlled by the Central Government and certain autonomous bodies and to prevent misuse of such premises."

The intention could not be clearer. The intention underlying the enactment of the Central Act undoubtedly, as has been endorsed by their Lordships of the Supreme Court is to safeguard public interest by making available for public use premises belonging to the Central Government or the Companies or Corporations either owned or controlled by the Central Government or in which the Central Government has substantial interest. The further underlying intention is to prevent the misuse of the premises. If there was any doubt left about the nature of the premises to fall within the definition of "public premises" it has been set at rest by the following very very pertinent observations in the same judgment, which I must reproduce hereinbelow for ready reference:-

> "64. It would thus appear that, while the Rent Control Act is intended to deal with the general relationship of landlords and tenants in respect of premises other than Government premises, the Public Premises Act is intended to deal with speedy recovery of possession of premises of

> public nature, i.e. property belonging to the Central Government, or Companies in which the Central Government has substantial interest or Corporations owned or controlled by the Central Government and certain corporations, institutions, autonomous bodies and local authorities. The effect of giving overriding effect to the provisions of the Public Premises Act over the Rent Control Act, would be that buildings belonging to Companies, Corporations and autonomous bodies referred to in S.2(e) of the Public Premises Act would be excluded from the ambit of the Rent Control Act in the same manner as properties belonging to the Central Government. The reason underlying the exclusion of property belonging to the Government from the ambit of the Rent Control Act, is that the Government while dealing with the citizens in respect of property belonging to it would not act for its own purpose as a private landlord but would act in public interest. What can be said with regard to Government in relation to property belonging to it can also be said with regard to companies, corporations and other statutory bodies mentioned in S. 2(e) of the Public Premises Act. In our opinion, therefore, keeping in view the object and purpose underlying both the enactments viz., the Rent Control Act and the Public Premises Act, the provisions of the Public Premises Act have to be construed as overriding the provisions contained in the Rent Control Act."

In the aforesaid observations a clear distinction has been drawn by the Supreme Court between the private premises, meaning in other words the premises other than Government premises where and in respect of which Rent Control Act is applicable regulating the general relationship of landlords and tenants, and the premises belonging to the Government and the institutions and the legal entities of the Government which thus

become "public premises" where the intention is to deal with speedy recovery of possession of such premises. The intent therefore is clear and unambiguous. It is that the Government while dealing with its citizens qua the property belonging to itself does not deal with them in the same manner as a private landlord would deal with its tenants with respect to the property belonging to a private landlord. The Government while dealing with its citizens qua its property is expected to act in public interest and only in public interest and that perhaps is the essence of the Central Act as well as the State Act and the underlying policy seeking eviction of unauthorized occupants under either of these two Acts.

Any property, therefore, which does not belong to the State Government (applying Himachal Pradesh Act) or to the Central Government (applying Central Act) or any Municipal Corporation, Municipal Committee, Notified Area Committee, a Panchayat Samiti, Panchayat or Improvement Trust, amongst other Institutions mentioned in Section 2(e) of the State Act cannot at all be termed to be falling in the class of "public premises" and, therefore, no such property can attract any provision of the State Act. The provisions of the State Act, for any purpose whatsoever would be attracted only if the property is "public premises" and belongs to any of the aforesaid Institutions, apart from the property belonging to the State Government itself or the other Institutions mentioned in Clauses (ii) to (iv) of sub-section (e) of Section 2 of the State Act. Brother Surjit Singh, J. in para 9 of his judgment has already elaborated upon the meaning to be given to the expression "Improvement Trust" occurring in the aforesaid clause (i) of sub-section (e) of Section 2. On my part, I only wish to add that upon reading the expression

"Improvement Trust" by following the principle of ejusdem generis the inescapable conclusion which is arrived at is that any Institution or a body by itself or simply adopting, wearing or carrying the name and symbol or description of "Improvement Trust" cannot be considered to be covered by the aforesaid Clause of the State Act unless such an Improvement Trust has the trappings of a State and is an authority falling under Article 12 of the Constitution of India. Unless, therefore, an Improvement Trust has the trappings of the State and/or is an authority falling within the purview of Article 12 of the Constitution of India, it does not attract the provisions of the State Act.

Applying the aforesaid principles, there is no manner of doubt that the proceedings initiated against the petitioner by the respondents under the State Act were totally and absolutely without any jurisdiction and these thus deserve to be quashed and set aside.

August 22, 2006. **(V.K. Gupta),**
(rks) **Chief Justice.**